

DESTINATION COURT OF ARBITRATION

MAYOR OF EASTCITY)

v.)

Case No. 3276-3A

THISSUCKS COMPANY)

SUPPLEMENTAL DECISION

This court has subject matter jurisdiction over the contract, negligence, and defective product claims asserted and personal jurisdiction over Thissucks Company, a foreign corporation.

To satisfy ‘traditional notions of fair play and substantial justice’ the defendant must have ‘minimum contacts’ with the forum before the defendant is required to defend a suit in that forum. See *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945). Whether a court has jurisdiction over a defendant turns on “the nature and extent of the defendant’s relationship to the forum State.” *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. ___, 141 S. Ct. 1017, 1024 (2021).

Specific personal jurisdiction exists where the defendant’s purposeful actions are sufficiently related to the dispute and the forum that the defendant could reasonably anticipate being sued in the forum. *Id.*, at 1024-25.

We have established a three-prong test for analyzing a claim of specific personal jurisdiction:

- (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
- (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e., it must be reasonable.

Schwarzenegger v. Fred Martin Superstore, 374 F.3d 797, 802 (9th Cir. 2004) (citing *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir.1987)) accord *Herbal Brands, Inc. v. Photoplaza, Inc.*, 72 F.4th 1085, 1090 (9th Cir. 2023).

Thissucks Company has the necessary minimum contacts with Destination to satisfy the requirements of due process. *International Shoe*, 326 U.S. at 316, 66 S. Ct. at 158.

I. The Contract Claim—Purposeful Availment

A defendant’s due process rights include the right to be sued where he has meaningful contacts.

An exercise of specific jurisdiction is appropriate only if the nonresident defendant has "purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183-84 (1985) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1239-40, 1983 (1958)). We have held that the "purposeful availment" requirement is satisfied if the defendant has taken deliberate action within the forum state or if he has created continuing obligations to forum residents.

Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir. 1995).

A defendant purposefully availed itself of the benefits of Destination Law if it

deliberately reached out beyond [its] home—by, for example, exploiting a market in the forum []or entering a contractual relationship centered there.

Ford Motor Co., 141 S. Ct. at 1024; accord *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 503 (9th Cir. 2023); *Davis v. Cranfield Aerospace Solutions, Ltd.*, 71 F. 4th 1154, 1163 (9th Cir. 2023); see *Schwarzenegger*, 374 F.3d at 802 ("performing a contract" in the forum).

The circumstances surrounding the contract lend further support to jurisdiction.

Purposeful availment can be established by a contract's negotiations, its terms, its contemplated future consequences, and the parties' actual course of dealing. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479 (1985).

Davis, 71 F. 4th at 1163. See ***EX Corporation v. Travelers et al.***, Destination Case No. 3276-1A.

The sale and delivery of the pump to Eastcity was performance of a contract on Destination and it resulted in continuing obligations to Destination residents—a warranty obligation to Eastcity. The contract was negotiated, and the efforts to enforce the warranty were negotiated, by Thissucks Company with Eastcity on Destination. The contract was centered on Destination. Thissucks Company purposefully availed itself of the privilege of doing business on Destination.

II. The Tort Claims—Purposeful Direction

The substantial connection between the forum and the defendant required by due process can also be satisfied by "an action of the defendant purposefully directed toward the forum State." *Asahi Metal Industries Co. Ltd. v. Superior Court of California*, 480 U.S. 102, 112, 107 S. Ct. 1026 (1987).

A showing that a defendant purposefully directed his conduct toward a forum state, by contrast, usually consists of evidence of the defendant's actions outside the forum state that are directed at the forum, such as the distribution in the forum state of goods originating elsewhere.

Schwarzenegger, 374 F.3d at 803. See ***EX Corporation v. Travelers***, *supra*.

The Stream of Commerce: The placement of a product into the stream of commerce "may bolster an affiliation germane to *specific* jurisdiction." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 131 S. Ct. 2846, 2857 (2011). *Accord Daimler AG, v. Bauman*, 571 U.S. 117, 134 S. Ct. 746, 758 (2014).

[W]here 'the sale of a product ... arises from the efforts of the manufacturer or distributor to serve ... the market for its product in [several] States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.'

Goodyear, 564 U.S. at 927 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559 (1980)). A forum

"does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum [].".

World-Wide Volkswagen, 444 U.S. at 297-98 (1980).

The Interactive E-Site: Use of a universally accessible interactive e-site in the regular course of business to sell a product into the forum satisfies the "effects test" for specific jurisdiction.

To determine whether a defendant "purposefully directed" its activities toward the forum, we apply, in turn, the "effects" test derived from *Calder v. Jones*, 465 U.S. 783 (1984)... . The *Calder* effects test asks "whether the defendant: '(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.'" *Will Co. v. Lee*, 47 F.4th 917, 922 (9th Cir. 2022) (quoting *Schwarzenegger*, 374 F.3d at 803).

Herbal Brands, Inc. v. Photoplaza, Inc., 72 F.4th 1085, 1091 (9th Cir. 2023).

[I]f a defendant, in its regular course of business, sells a physical product via an interactive website and causes that product to be delivered to the forum, the defendant 'expressly aimed' its conduct at that forum.

Id., at 1093.

[T]he sales of physical products into a forum via an interactive website can be sufficient to establish that a defendant expressly aimed its conduct at the forum, provided that two key elements are present. First, the sales must occur as part of the defendant's regular course of business instead of being 'random, isolated, or fortuitous.'

Id., at 1094 (quoting *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984)) (emphasis in original).

Second, the defendant must exercise some level of control over the ultimate distribution of its products beyond simply placing its products into the stream of commerce. See *Ayla, [LLC v. Alya Skin Pty. Ltd.]* 11 F.4th [972,] 981-82 [(9th Cir. 2021)] (concluding that the

defendant's offering of products for sale through its website and third-party websites was evidence that the defendant's contacts with the forum were not "random, isolated, or fortuitous").

Id. (emphasis in original).

The outcome of the express-aiming inquiry does not depend on the number of sales made to customers in the forum. ...

Instead of taking on an arbitrary line-drawing task, we require only that the sale must occur in the defendant's regular course of business.

Id., at 1095. *But see Briskin v. Shopify Inc.*, No. 22-15815, slip op. at 24-26, 29-30 (9th Cir. Nov. 28, 2023) (distinguishing "sale of a physical product to a consumer in the forum state via an interactive website" from "other internet activities," such as displaying photographs or videos, or extracting data to process consumer payments, that may or may not indicate actions "expressly aiming" at a specific forum).

When a defendant

structured its sales activity in such a manner as to invite orders from [a forum] and developed the capacity to fill them[,] [i]t cannot now point to its customers in [that forum] and tell us, 'It was all their idea.'

NBA Props., Inc. v. HANWJH, 46 F.4th 614, 625 (7th Cir. 2022) (citation and some quotation marks omitted), *cert. denied*, 143 S. Ct. 577 (2023). *Accord Herbal Brands*, 72 F.4th at 1095.

The negligence and product liability tort claims arise from sale of the Thissucks' pump to Eastcity using a universally accessible interactive website. Thissucks delivered the pump to Destination after intentionally marketing the pump (and related design services for the water delivery system) to Eastcity. Thissucks Company purposefully directed its business activity at Destination.

III. The Claims Arise Out of or Relate to Thissucks Company's Forum-Related Activities

The contract warranty claim arises out of would not have occurred but for Thissucks Company's contract related activities focused toward Destination. *See Burger King*, 471 U.S. at 472-73, 105 S. Ct. at 2182.

The negligence and product liability tort claims relate to Thissucks Company's Destination related activities. The effects of delivery of the allegedly defective pump were felt on Destination. Jurisdiction exists under the *Calder* effects test. *Calder v. Jones*, 465 U.S. 783 (1984).

IV. The Exercise of Jurisdiction is Reasonable

Finally, the exercise of jurisdiction is reasonable under the factors established in *Burger King*, 471 U.S. at 476-77, 105 S. Ct. at 2184-85. Destination has a strong interest in providing judicial redress

for injuries to its citizens, including municipal corporations. See ***EX Corporation v. Travelers, et al.***, Destination Case No. 3276-1A (supplemental Decision) *supra*.

Personal jurisdiction exists over Thissucks Company.

The Clerk is ordered to enter judgment in accordance with the foregoing.

/s/ AI Judge
